

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 11. DEPARTMENT OF ADMINISTRATION PUBLIC BUILDINGS MAINTENANCE

PREAMBLE

1. Sections Affected

Rulemaking Action

Article 1	New Article
R2-11-101	New Section
R2-11-102	New Section
R2-11-103	New Section
R2-11-104	New Section
R2-11-105	New Section
R2-11-106	New Section
R2-11-107	New Section
R2-11-108	New Section
R2-11-109	New Section
R2-11-110	New Section
R2-11-111	New Section
R2-11-112	New Section
R2-11-113	New Section
R2-11-114	New Section
Article 2	New Article
R2-11-201	New Section
R2-11-202	New Section
R2-11-203	New Section
R2-11-204	New Section
R2-11-205	New Section
R2-11-206	New Section
R2-11-207	New Section
R2-11-208	New Section
R2-11-209	New Section
Article 3	New Article
R2-11-301	New Section
R2-11-302	New Section
R2-11-303	New Section
R2-11-304	New Section
R2-11-305	New Section
R2-11-306	New Section
R2-11-307	New Section
R2-11-308	New Section
R2-11-309	New Section
R2-11-310	New Section
R2-11-311	New Section
Article 4	New Article
R2-11-401	New Section
R2-11-402	New Section
R2-11-403	New Section
R2-11-404	New Section
R2-11-405	New Section
R2-11-406	New Section

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R2-11-407	New Section
R2-11-408	New Section
R2-11-409	New Section
Article 5	New Article
R2-11-501	New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 41-621, 41-791, and 41-796

Implementing statutes: A.R.S. §§ 41-621 (insurance), 41-791 (public buildings), and 41-796 traffic and parking

3. The effective date of the rules:

August 8, 2003. The Department is requesting that 2 A.A.C. 11, Articles 1 through 5, become effective immediately under the criteria listed in A.R.S. § 41-1032(A). It is important for these rules to be effective immediately so the Department can maintain public health and safety on or around state property. Article 1 rules regulate the conduct of state employees and the public on state property. Article 2 rules regulate traffic and parking on state property. Article 3 rules regulate the use of state property for solicitation. Article 4 rules regulate the use of state property for special events. Article 5 is necessary in the event one section of the rules is declared unconstitutional or illegal. The ability for the Department to regulate activities and have access to public property and state offices is necessary to ensure that people are not harmed, work is not disrupted, equipment is not misused, and property is not damaged.

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 105, January 10, 2003

Notice of Rulemaking Docket Opening: 9 A.A.R. 732, February 28, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 578, February 28, 2003

Notice of Emergency Rulemaking: 9 A.A.R. 3046, July 11, 2003

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Rob Smook
Address: 100 N. 15th Avenue, 4th Floor
Phoenix, AZ 85007
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6. An explanation of the rules, including the agency's reason for initiating the rules:

The attached establishes the rules for parking and traffic movement, special events, solicitation, general building maintenance, and control of state buildings. The submitted rules were allowed to expire under A.R.S. § 41-1056(E) (see 2 A.A.C. 6). They are being submitted for reinstatement with the removal of archaic language and other necessary revisions.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not utilize a study for evaluating or justifying the rulemaking.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The economic impact of the new rulemaking will closely resemble the past experience under the expired rules. The previous rules had been in place for years before they expired. Article 1 rules are used to regulate the conduct of employees and the public on state property. The estimated actual impact of these rules involves discipline or termination of state employee or fining members of the public for rule violations. The impacted parties under these rules are state employees or members of the public. In addition, Article 1 rules prohibit agencies under the Department of Administration's building maintenance jurisdiction from repairing, replacing, or conducting any other work on the plumbing, electrical, heating, or cooling systems in buildings without authorization from the Department. The impacted parties are state agencies, state employees, and members of the public.

Article 2 rules regulate traffic and parking on state property. The rules will have a negative impact on violators cited by the Capitol Police. The actual estimated impact for violations of the rules includes fines ranging from \$16.00 to \$50.00, as prescribed in R2-11-206. The impacted parties under these rules are the parking public (including state

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employees, members of the public, and businesses providing services to the state), the Capitol Police, the Office of Administrative Hearings, and the Management Services Division of the ADOA.

The proposed rules under Articles 3 through 5 regulate the use of state property for solicitation and special events. The estimated economic impact of the special events rules arises from the requirement that special event insurance be purchased by the event organizer. The estimated cost is between five and twenty dollars per thousand dollars of coverage. The insurance coverage recommended by Risk Management is necessary to limit the liability of the state. The rules may have an adverse economic impact on businesses that engage in office solicitation. The rules reduce and impinge on office solicitations such as sales of cosmetics (i.e., Avon, Mary Kay, etc.), and other business solicitations. The administrative costs of compliance are estimated to be minimal to the Department. There are no viable alternative methods of compliance that would apply to small businesses. The impacted parties under the rules for solicitation and special events are state employees, members of the public, business, the Department, protesters, and event organizers.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Based on suggestions from the Attorney General's Office and Council staff, minor, non-substantive changes were made in the rules to improve clarity. The suggestions included grammatical and other changes necessary to clarify the rules. No substantive changes were made to the rules.

11. A summary of the comments made regarding the rules and the agency response to them:

The close of record for the proposed rules was March 31, 2003. The Department did not receive oral or written comments during the comment period.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

Yes. The rulemaking has been filed as an emergency rulemaking with the Attorney General's Office. The emergency rules are now in effect.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 11. DEPARTMENT OF ADMINISTRATION

PUBLIC BUILDINGS MAINTENANCE

ARTICLE 1. GENERAL

Section

<u>R2-11-101.</u>	<u>Definitions</u>
<u>R2-11-102.</u>	<u>Alcoholic Beverages</u>
<u>R2-11-103.</u>	<u>Altering Buildings or Grounds</u>
<u>R2-11-104.</u>	<u>Animals</u>
<u>R2-11-105.</u>	<u>Bicycles, Rollerblades, Rollerskates, and Skateboards</u>
<u>R2-11-106.</u>	<u>Electrical or Plumbing Systems</u>
<u>R2-11-107.</u>	<u>Heating or Cooling Equipment</u>
<u>R2-11-108.</u>	<u>Noise</u>
<u>R2-11-109.</u>	<u>Plants</u>
<u>R2-11-110.</u>	<u>Roofs</u>
<u>R2-11-111.</u>	<u>Signs</u>
<u>R2-11-112.</u>	<u>Smoking</u>
<u>R2-11-113.</u>	<u>Waste</u>
<u>R2-11-114.</u>	<u>Windows</u>

ARTICLE 2. TRAFFIC AND PARKING

Section

<u>R2-11-201.</u>	<u>Definitions</u>
<u>R2-11-202.</u>	<u>General Provisions</u>
<u>R2-11-203.</u>	<u>Parking Prohibitions</u>
<u>R2-11-204.</u>	<u>Parking Decals</u>

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<u>R2-11-205.</u>	<u>Operation of Vehicles on State Property</u>
<u>R2-11-206.</u>	<u>Penalties</u>
<u>R2-11-207.</u>	<u>Hearings</u>
<u>R2-11-208.</u>	<u>Rehearing</u>
<u>R2-11-209.</u>	<u>Removal of Vehicles from State Property</u>

ARTICLE 3. SOLICITATION

Section

<u>R2-11-301.</u>	<u>Definitions</u>
<u>R2-11-302.</u>	<u>Unauthorized Solicitation Prohibited</u>
<u>R2-11-303.</u>	<u>Application</u>
<u>R2-11-304.</u>	<u>Processing Procedure</u>
<u>R2-11-305.</u>	<u>Permit Issuance: Denial</u>
<u>R2-11-306.</u>	<u>Bulletin Boards</u>
<u>R2-11-307.</u>	<u>State Resources</u>
<u>R2-11-308.</u>	<u>Work Sites</u>
<u>R2-11-309.</u>	<u>Exemptions</u>
<u>R2-11-310.</u>	<u>Suspension or Revocation</u>
<u>R2-11-311.</u>	<u>Review of Denial or Summary Suspension</u>

ARTICLE 4. SPECIAL EVENTS

Section

<u>R2-11-401.</u>	<u>Definitions</u>
<u>R2-11-402.</u>	<u>Unauthorized Special Event Prohibited</u>
<u>R2-11-403.</u>	<u>Application</u>
<u>R2-11-404.</u>	<u>Processing Procedure</u>
<u>R2-11-405.</u>	<u>Permit Issuance: Denial</u>
<u>R2-11-406.</u>	<u>Monitors</u>
<u>R2-11-407.</u>	<u>Risk Management</u>
<u>R2-11-408.</u>	<u>Suspension or Revocation</u>
<u>R2-11-409.</u>	<u>Review of Denial or Summary Suspension</u>

ARTICLE 5. SEVERABILITY

Section

<u>R2-11-501.</u>	<u>Validity of Rules</u>
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ARTICLE 1. GENERAL

R2-11-101. Definitions

The following definitions apply in this Chapter:

1. "Agency" has the meaning in A.R.S. § 41-1001.
2. "Department" means the Department of Administration.
3. "Director" means the Director of the Department of Administration or the Director's designated agent.
4. "Person" has the meaning in A.R.S. § 1-215 but includes an agency, unless the agency is listed in A.R.S. § 41-791(B)(3).
5. "State building" means a building under the jurisdiction of the Director.
6. "State property" means all real property and buildings under the jurisdiction of the Department, as prescribed by A.R.S. § 41-791.

R2-11-102. Alcoholic Beverages

A person shall not possess or consume alcoholic beverages on state property.

R2-11-103. Altering Buildings or Grounds

A person shall not alter, remodel, or redecorate state property without prior approval from the Director.

R2-11-104. Animals

A person shall not bring an animal, other than an animal guide or service animal, onto state property without prior approval from the Director.

R2-11-105. Bicycles, Rollerblades, Rollerskates, and Skateboards

A person shall not use or operate bicycles, rollerblades, rollerskates, or skateboards on state property, unless that person is an on-duty police officer on bicycle patrol or a state employee using a bicycle for transportation to and from work.

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R2-11-106. Electrical or Plumbing Systems

A person shall not install or modify an electrical or plumbing system on state property, or any part of such a system, without prior approval from the Director.

R2-11-107. Heating or Cooling Equipment

A person shall not tamper with or adjust heating or cooling equipment or controls on state property without prior approval from the Director.

R2-11-108. Noise

A person shall not create loud noises on state property that interfere with the work of an employee or daily business of an agency.

R2-11-109. Plants

A person shall not pick, cut, or remove flowers, shrubs, trees, or other plants or parts of plants from state property without prior approval from the Director.

R2-11-110. Roofs

A person shall not be on the roof of a state building without prior approval from the Director.

R2-11-111. Signs

A person shall not install a sign of any type on state property without prior approval from the Director.

R2-11-112. Smoking

A person shall not smoke in a state building unless the person is in a designated smoking area or exempt under A.R.S. § 36-601.02(B).

R2-11-113. Waste

A. A person shall not leave garbage, litter, trash, human or animal waste, or any other kind of waste on state property unless the waste is deposited in a container the Department maintains for that kind of waste.

B. A person shall not deposit waste collected from a private residence or commercial business on state property.

R2-11-114. Windows

A person shall not open windows in air-conditioned state buildings without prior approval from the Director.

ARTICLE 2. TRAFFIC AND PARKING

R2-11-201. Definitions

The following definitions apply in this Article:

1. "Citation" means a document, issued by the Department's Capitol Police under A.R.S. § 41-796, that contains a notice to appear.
2. "Decal" means a graphic designed label, placard, sticker, or tag that, when properly displayed, authorizes preferential parking privileges in state parking lots for the driver of a vehicle.
3. "Designate" means to identify with signs or markings.
4. "Employee" means any person elected, appointed, or employed by the state, either on a part-time or full-time basis, whether paid by payroll or under contract or serving as a volunteer.
5. "Loading zone" means an area that is painted yellow, designating a place for business pickups and deliveries.
6. "No-parking zone" means an area that is painted red, designating a place where parking is not permitted.
7. "Parking" means stopping or placing a vehicle in an area, regardless of whether the vehicle is attended or unattended.
8. "Parking space" means an area that the Department outlines with painted white lines, designating a place for parking a vehicle.
9. "Reserved parking space" means any parking space designated for a special purpose or a special class, such as physically disabled persons, travel reduction program participants, or visitors.
10. "Safety zone" means an area or space that is both:
 - a. Officially set apart within a roadway for the exclusive use of pedestrians; and
 - b. Protected, marked, or indicated by adequate signs as to be plainly visible at all times.
11. "Vehicle" has the meaning in A.R.S. § 28-101 and includes a "motor vehicle", a term also defined in A.R.S. § 28-101.
12. "Visitor" means any person other than an employee.

R2-11-202. General Provisions

A. The state is not responsible for the care and protection of any vehicle or its contents at any time the vehicle is operated or parked on state property.

B. The person to whom a parking permit is issued is responsible for all parking violations involving the person's vehicle.

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- C. If parking lot or area reservation hours are altered, the Department shall post notices at the parking lot or area, and the changes are effective immediately.

R2-11-203. Parking Prohibitions

- A. A person shall not park a vehicle in a:
1. Bicycle rack or area;
 2. Loading zone, unless the person is making a pickup or delivery and the person's vehicle has commercial license plates or is state owned. Loading zone parking is permitted during the time the person is actually engaged in loading or unloading;
 3. Location that is not designated as a parking space;
 4. No parking zone;
 5. Reserved parking space without authorization, unless the person is a visitor using parking reserved for visitors; or
 6. Safety zone.
- B. A person shall not obstruct any of the following with a vehicle:
1. Building entrance.
 2. Driveway.
 3. Fire lane.
 4. Loading dock, or
 5. Properly parked vehicle.
- C. A person shall not drive or park a vehicle:
1. On a pedestrian path or sidewalk; or
 2. In any area on state property closed by barricades, chain, tape, rope, traffic cones, or other traffic-control devices.
- D. A person shall not park outside of the area designated by painted white lines when using a parking space.
- E. In an emergency the Department may impose parking limitations or prohibitions required by the particular circumstances.
- F. For special events the Department may impose parking limitations or prohibitions based on all of the following factors:
1. Previous experience with similar events, and
 2. Risk data.

R2-11-204. Parking Decals

- A. Unless a person is a visitor using parking reserved for visitors, the person shall properly display a reserved parking space decal in the manner prescribed in this Section to be authorized to park in a reserved parking space.
- B. To park in a parking space reserved for the physically disabled, a person shall obtain a removable windshield placard or special plates, bearing the international symbol of access, from the Department of Transportation, Motor Vehicle Division, and display the placard or plates as prescribed by rules of the Department of Transportation.
- C. A person with a decal for any other kind of reserved parking space shall display the decal from the rearview mirror, attach the decal to the left side of the windshield, or display the decal on the left side of the dashboard. The person shall ensure that the decal is visible through the windshield so it can be read by someone standing outside the vehicle.

R2-11-205. Operation of Vehicles on State Property

- A. On state property the Department shall enforce all state laws governing the operation of vehicles.
- B. A person driving or parking a vehicle on state property shall obey posted traffic and parking signs.
- C. The Department's Capitol Police shall enforce a maximum speed limit of 5 miles per hour in all state parking lots under the Department's jurisdiction.
- D. Any person who has been in an accident involving a moving vehicle on state property shall immediately report the accident to the Department's Capitol Police.

R2-11-206. Penalties

- A. The registered owner of a vehicle involved in a violation of R2-11-203, R2-11-204, or R2-11-205 shall pay the monetary penalties prescribed in this Section.
- B. Capitol Police officers or Capitol Police security aides shall issue citations, containing the notice to appear described in A.R.S. § 41-796(E), according to the following schedule:
1. Parking in a bicycle rack or area: \$16.00.
 2. Parking in a loading zone: \$20.00.
 3. Parking in a location that is not designated as a parking space: \$20.00.
 4. Parking in a no parking zone: \$20.00.
 5. Unauthorized parking in a space reserved for the physically disabled: \$50.00.
 6. Unauthorized parking in any other kind of reserved parking space: \$16.00.
 7. Parking in a safety zone: \$20.00.
 8. Obstructing a building entrance, driveway, fire lane, loading dock, or properly parked vehicle: \$20.00.
 9. Driving or parking on a pedestrian path or sidewalk: \$25.00.

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10. Driving or parking in any area on state property closed by barricades, chain, tape, rope, traffic cones, or other traffic-control devices: \$25.00.
 11. Parking outside of parking space lines: \$16.00.
 12. Improperly displaying a parking decal: \$10.00.
 13. Failing to obey a state law governing the operation of a vehicle while on state property: \$16.00.
 14. Failing to obey posted traffic or parking signs on state property: \$16.00.
 15. Exceeding the maximum speed limit of 5 miles per hour in a state parking lot: \$16.00.
 16. Failing to immediately report an accident involving a moving vehicle on state property to the Department's Capitol Police: \$16.00.
- C.** For the purposes of this Article, service of a notice to appear is complete when the police officer or security aide issuing the citation secures it to the vehicle in a conspicuous place.
- D.** Within 10 business days from the issuance date of a citation, the registered owner of the vehicle shall pay the appropriate monetary penalty to the Department, admitting the violation or indicating no contest, or contest the citation under A.R.S. § 41-796(E) and the procedures in R2-11-207. The registered owner may pay the penalty by checking the appropriate box and mailing the payment and citation to the Department, using the address printed on the citation.
- E.** If the registered owner does not pay the monetary penalty within 10 business days of the citation date and fails to request a hearing under R2-11-207, the Department shall treat the failure to respond as an admission of the violation, declare the penalty to be in default, and serve a notice of default on the registered owner with a bill for the amount of the original penalty and an additional monetary penalty of \$20.00 for failure to respond. The Department may take appropriate action to collect these monetary penalties, based on the resources available for pursuing collection.

R2-11-207. Hearings

- A.** If a registered owner wishes to contest a citation, the registered owner shall request a hearing within 10 days after issuance of the notice to appear described in A.R.S. § 41-796(E) by checking the appropriate box and mailing the citation to the Department, using the address printed on the citation.
- B.** Upon receipt of a request for hearing, the Department shall schedule a hearing and serve notice of the hearing, according to A.R.S. § 41-1092.05.
- C.** The Director or an administrative law judge from the Office of Administrative Hearings shall conduct each hearing as a contested case, in the manner prescribed in A.R.S. Title 41, Chapter 6, Article 10. The Department shall serve its decision on the registered owner. If the Director or the administrative law judge determines that a violation has occurred and imposes a monetary penalty, a bill for the amount of the penalty shall be served with the decision. The registered owner shall pay the monetary penalty within 10 business days from the date on the decision or within the time prescribed by the administrative law judge. If the registered owner does not pay the monetary penalty within this time, the registered owner shall pay an additional monetary penalty of \$20.00. The Department may take appropriate action to collect any monetary penalty imposed, based on the resources available for pursuing collection.

R2-11-208. Rehearing

- A.** A party in a contested case before the Department may file a motion for rehearing or review within 30 days after service of the final administrative decision, as prescribed in A.R.S. § 41-1092.09. The party shall attach a supporting memorandum, specifying the grounds for the motion. A party is not required to file a motion for rehearing or review of the final administrative decision to exhaust the party's administrative remedies.
- B.** An opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The party shall support the response with a memorandum discussing relevant legal and factual issues.
- C.** Any party may request oral argument.
- D.** The Director may grant a rehearing or review for any of the following causes materially affecting a party's rights:
1. Irregularity in the administrative proceedings or any order or abuse of discretion, that deprived the moving party of a fair hearing;
 2. Misconduct of the Department, the administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
 7. That the findings of fact or decision are not justified by the evidence or are contrary to law.
- E.** The Director may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order, and any rehearing shall cover only those matters specified. The Director may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

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- F. Not later than 15 days after the date of the decision, the Director may grant a rehearing or review on the Director's own initiative for any reason for which the Director might have granted relief on motion of a party.
- G. If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within five days after service, serve opposing affidavits.
- H. The Director shall rule on the motion as prescribed in A.R.S. § 41-1092.09. If a rehearing is granted, the Department shall hold the rehearing within 30 days after the date on the order granting the rehearing.

R2-11-209. Removal of Vehicles from State Property

The Department shall remove any vehicle on state property parked in a barricaded area, abandoned, or parked in a manner that constitutes a hazard or impediment to vehicular or pedestrian traffic or to the movement and operation of emergency equipment. The registered owner of the vehicle shall pay for all costs of removal.

ARTICLE 3. SOLICITATION

R2-11-301. Definitions

The following definitions apply in this Article:

1. "Solicitation" means any activity that can be interpreted as being for the promotion, sale, or transfer of products, services, memberships, or causes. Distribution or posting of advertising, circulars, flyers, handbills, leaflets, posters, or other printed information for these purposes is solicitation.
2. "Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.
3. "Solicitor" means a person conducting a solicitation.
4. "Work site" means any location within a state building where public employees or officers conduct the daily business of an agency. Cafeterias and break rooms are not work sites.

R2-11-302. Unauthorized Solicitation Prohibited

A person shall not conduct a solicitation on state property without express written permission from the Director.

R2-11-303. Application

- A. Any person who would like to conduct a solicitation on state property may apply for a permit by filing, either in person or by mail, a Department-approved solicitation application form with the Director's Office.
- B. The completed application form shall be submitted at least 15 days before the desired date of the solicitation. A completed application form is one that is legible and contains, at a minimum, all of the following information:
 1. The name, address, and telephone number of the solicitor;
 2. The proposed date of the solicitation and the approximate starting and concluding times;
 3. The specific, proposed location for the solicitation;
 4. A general description of the solicitation's purpose; and
 5. Copies of solicitation materials to be used.

R2-11-304. Processing Procedure

- A. Within three days of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application shall supply the missing information within five days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
- C. Upon receipt of all missing information within five days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
- D. The Department shall not process an application for a permit until the applicant has fully complied with R2-11-303.
- E. The Director shall render a permit decision no later than three days after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.
- F. For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
 1. Administrative completeness review time-frame: three days.
 2. Substantive review time-frame: three days.
 3. Overall time-frame: six days.

R2-11-305. Permit Issuance; Denial

- A. Before issuing a permit, the Director shall review the application.
- B. After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has complied with the application requirements in R2-11-303.
- C. The Director may deny a permit for one or more of the following reasons:
 1. The solicitation interferes with the work of an employee or daily business of an agency;
 2. The solicitation conflicts with the time, place, manner, or duration of other events or solicitations for which permits have been issued or are pending;
 3. The solicitation creates a risk of injury or illness to persons or risk of danger to property; or
 4. The applicant or solicitation fails to comply with the requirements of this Article.

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- D.** A permit shall not be issued earlier than 60 days before the solicitation.
- E.** If the Director denies a permit, the Department shall send the applicant a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules.
 2. The applicant's right to seek a hearing to challenge the denial.
 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06, and
 4. The time periods for appealing the denial.

R2-11-306. Bulletin Boards

- A.** The Director shall designate at least one bulletin board for solicitation material in each state building.
- B.** A person conducting a solicitation shall post solicitation material only on bulletin boards designated under subsection (A).
- C.** The Department shall remove solicitation material that is outdated or improperly posted.

R2-11-307. State Resources

A person shall not use state materials, supplies, or equipment or other resources, such as payroll stuffing or interoffice mail, to conduct a solicitation.

R2-11-308. Work Sites

Except for posting solicitation material on a bulletin board designated under R2-11-306, a person shall not conduct a solicitation at a work site.

R2-11-309. Exemptions

This Article does not apply to the following state programs:

1. The State Deferred Compensation Program;
2. The State Employees Charitable Campaign;
3. The U.S. Savings Bond Drive;
4. The United Blood Services Blood Drive;
5. The Capitol Rideshare Commuter Club;
6. The Capitol Rideshare Clean Air Campaign;
7. The Employee Wellness Program.
8. Employee recognition programs of each agency subject to these rules.

R2-11-310. Suspension or Revocation

- A.** The Director may suspend or revoke a permit for failure to comply with this Article or other applicable laws.
- B.** Before the Director suspends or revokes a permit, the Department shall send the solicitor written notice, explaining:
1. The reason for suspension or revocation, with citations to supporting statutes or rules;
 2. The solicitor's right to a hearing before suspension or revocation;
 3. The time and place of the hearing concerning the suspension or revocation.
- C.** If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend the permit pending proceedings for revocation or other action, based on circumstances of the emergency.

R2-11-311. Review of Denial or Summary Suspension

- A.** Under A.R.S. Title 41, Chapter 6, Article 10, an applicant or solicitor may obtain a hearing on a denial or summary suspension.
- B.** An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-305(E).
- C.** If the Director summarily suspends a permit under R2-11-310(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.
- D.** The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

ARTICLE 4. SPECIAL EVENTS

R2-11-401. Definitions

The following definitions apply in this Article:

1. "Special event" or "event" means an assembly, demonstration, display, festival, parade, or rally conducted by a person other than a ceremony, gathering, or press conference conducted by a person authorized by the head of a state agency using the agency's own office space.
2. "Sponsor" means the person holding a special event.

R2-11-402. Unauthorized Special Event Prohibited

A person shall not use state buildings or grounds for a special event without express written permission from the Director.

Notices of Final Rulemaking

R2-11-403. Application

- A.** Any person who would like to hold a special event may apply for a permit by filing, either in person or by mail, a Department-approved event application form with the Office of Special Events.
- B.** The completed application form shall be submitted at least two days before the desired date of the special event. A completed application form is one that is legible and contains, at a minimum, all of the following information:
 - 1. The name, address, and telephone number of the sponsor;
 - 2. The proposed date of the event and the approximate starting and concluding times;
 - 3. The specific, proposed location for the event;
 - 4. A general description of the event, including equipment and facilities to be used;
 - 5. Approximate number of persons expected to be in attendance;
 - 6. The name, address, and telephone number of the person responsible for clean-up of the area after the activity, if different from the person in subsection (B)(1);
 - 7. The name, address, and telephone number of any chief monitor who will be designated to direct the event;
 - 8. A description of the badge or article of clothing used to identify monitors;
 - 9. A copy of any insurance policy for the special event; and
 - 10. A copy of any contract for medical, sanitary, and security services.
- C.** The Director may accept a completed application form submitted less than two days before a press conference if the Director determines that enforcing the two-day requirement would nullify the need for the press conference. In this situation, R2-11-404 does not apply.

R2-11-404. Processing Procedure

- A.** Within one day of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
- B.** An applicant with an incomplete application shall supply the missing information within five days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
- C.** Upon receipt of all missing information within five days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
- D.** The Department shall not process an application for a permit until the applicant has fully complied with R2-11-403.
- E.** The Director shall render a permit decision no later than one day after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.
- F.** For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
 - 1. Administrative completeness review time-frame: one day.
 - 2. Substantive review time-frame: one day.
 - 3. Overall time-frame: two days.

R2-11-405. Permit Issuance; Denial

- A.** Before issuing a permit, the Director shall review the application.
- B.** After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has:
 - 1. Complied with the application requirements in R2-11-403;
 - 2. Posted any deposit necessary under R2-11-407;
 - 3. Obtained any insurance necessary under R2-11-407; and
 - 4. Submitted evidence that the applicant will provide any medical, sanitary, and security services necessary under R2-11-407. Submission of a copy of the contract for these services will satisfy this requirement.
- C.** The Director may deny a permit for one or more of the following reasons:
 - 1. The event interferes with the work of an employee or daily business of an agency;
 - 2. The event conflicts with the time, place, manner, or duration of other events for which permits have been issued or are pending;
 - 3. The event creates a risk of injury or illness to persons or risk of danger to property; or
 - 4. The applicant or permit fails to comply with the requirements of this Article.
- D.** A permit shall not be issued earlier than 60 days before the special event.
- E.** If the Director denies a permit, the Department shall send the applicant a written notice explaining:
 - 1. The reason for denial, with citations to supporting statutes or rules;
 - 2. The applicant's right to seek a hearing to challenge the denial;
 - 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - 4. The time periods for appealing the denial.

R2-11-406. Monitors

The sponsor shall designate one monitor for every 50 persons expected to be in attendance. The monitors shall wear a uniform, distinctive badge, or a distinctive article of clothing at all times during the event for identification purposes.

Arizona Administrative Register / Secretary of State
Notices of Final Rulemaking

R2-11-407. Risk Management

- A.** The Director may take one or more of the following actions to the extent it is necessary and in the best interests of the state:
1. Impose conditions on the conduct of the event in the permit;
 2. Require the applicant to post a deposit against damage and clean-up expense;
 3. Require the applicant to carry liability insurance and provide the certificate of insurance; and
 4. Require the applicant to provide medical, sanitary, and security services.
- B.** The Director shall consider all of the following criteria to determine whether one or more of the actions in subsection (A) is necessary and in the best interests of the state:
1. Previous experience with similar events;
 2. Deposits required for similar events in Arizona;
 3. Risk data;
 4. Medical, sanitary, and security services required for similar events in Arizona and the cost of those services.
- C.** The Department shall not provide insurance or guarantee against damage to equipment or personal property of any person using state buildings or grounds.
- D.** If the Director requires insurance for a special event, the sponsor shall list the state of Arizona and the Department of Administration as additional insured entities.
- E.** The sponsor is liable to the state for any injury done to its property and for any expense arising out of the sponsor's use of state buildings or grounds.

R2-11-408. Suspension or Revocation

- A.** The Director may suspend or revoke a permit for failure to comply with this Article, permit conditions, or other applicable laws.
- B.** Before the Director suspends or revokes a permit, the Department shall send the sponsor written notice, explaining:
1. The reason for suspension or revocation, with citations to supporting statutes or rules;
 2. The sponsor's right to a hearing before suspension or revocation.
- C.** If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend a permit pending proceedings for revocation or other action, based on the circumstances of the emergency.

R2-11-409. Review of Denial or Summary Suspension

- A.** Under A.R.S. Title 41, Chapter 6, Article 10, an applicant or sponsor may obtain a hearing on a denial or summary suspension.
- B.** An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-405(E).
- C.** The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.
- D.** If the Director summarily suspends a permit under R2-11-408(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.

ARTICLE 5. SEVERABILITY

R2-11-501. Validity of Rules

If a rule or portion of a rule contained in this Chapter is held unconstitutional or invalid, the holding does not affect the validity of the remaining rules.

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSURE

PREAMBLE

1. Sections Affected

R9-10-901
R9-10-905
R9-10-908

Rulemaking Action

Amend
Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-132(A) and 36-136(F)

Implementing statutes: A.R.S. §§ 36-405 and 36-406

3. The effective date of the rules:

October 4, 2003

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 536, February 21, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 1274, April 25, 2003

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Judy Sgrillo, Program Manager

Address: Division of Assurance and Licensure Services
1647 E. Morten, Suite 130
Phoenix, AZ 85020

Telephone: (602) 674-9705

Fax: (602) 395-8910

E-mail: jsgrill@hs.state.az.us

or

Name: Kathleen Phillips, Rules Administrator

Address: Office of Administrative Rules
1740 W. Adams, Suite 102
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

6. An explanation of the rules, including the agency's reasons for initiating the rules:

A.R.S. § 36-136(F) provides the general statutory authority for the Department of Health Services (Department) to make and amend rules. A.R.S. § 36-405(A) requires the Director of the Department to adopt rules establishing minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to assure the public health, safety and welfare. It further requires that the standards and requirements relate to the construction; equipment; sanitation; staffing for medical, nursing, and personal care services; and recordkeeping pertaining to the administration of medical, nursing, and personal care services in accordance with generally accepted practices of health care. A.R.S. § 36-405(B) allows the Department to, by rule, classify and subclassify health care institutions according to character, size, and range of services provided.

Title 9, Chapter 10, Article 9 of the *Arizona Administrative Code* contains minimum standards for all licensed nursing care institutions. The Department recently made a new Article 9, which was approved by the Governor's Regulatory Review Council on January 7, 2003. The Department is amending R9-10-905 and R9-10-908 to clarify the language pertaining to the tuberculosis testing requirements for staff, volunteers, and residents.

Notices of Final Rulemaking

- 7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

- 8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 9. The summary of the economic, small business, and consumer impact:**

The Department anticipates that any costs associated with this rulemaking will be minimal. The Department will incur minimal costs to promulgate the rulemaking and notify the providers of the changes. The Department does not anticipate incurring ongoing costs resulting from changes in the proposed rules.

Since 1995, the rules for nursing care institutions have required annual tuberculosis (TB) testing for staff, volunteers, and residents. There is some concern that the current rules may be confusing with regard to the TB requirements. This rulemaking is to clarify the requirements. The initial and annual TB testing requirements are combined in the current rules. The new rules being promulgated have separated the requirements for clarification. The nursing care institutions retest staff, volunteers, and residents annually based on the expiration of the last TB test. The new rule provides a 30-day period before the expiration of the last TB test for nursing care institutions to perform retests. The nursing care institutions should not incur increased costs for this change.

The Department has added a new requirement that a resident transferred from one nursing care institution to another nursing care institution is not required to obtain new evidence of freedom from infectious pulmonary tuberculosis at the time of admission if less than 12 months has passed since the previous evidence was obtained and, if the evidence is transferred with the resident. The Department anticipates that this addition to the rules should result in a minimal cost savings to a nursing care institution.

The Department believes that clarifying the requirements increases understandability, and is the least intrusive and least costly method of achieving the purpose of the proposed rulemaking.

- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The Department made technical and grammatical changes to the rules based on comments received from the Governor's Regulatory Review Council's staff.

- 11. A summary of the comments made regarding the rules and the agency response to them:**

The following table summarizes the comments received by the Department and provides the Department's response to each comment.

Comment	ADHS Response
Two commenters stated that the changes to the tuberculosis screening requirements, and particularly the new requirement that allows transfer of a tuberculosis screening from one nursing care institution to another nursing care institution, within the allotted time-frame, are excellent from the nursing care institutions' perspective.	The Department appreciates the support.
One commentator asked whether a resident transferred to a hospital for care and subsequently returned to the nursing care institution must be rescreened for infectious tuberculosis.	The Department explained that this scenario would not require another screening unless a physician or other qualified individual determined that the resident was showing symptoms and needed to be rescreened before the 12-month time-frame allowed by rule.

- 12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

- 13. Incorporations by reference and their location in the rules:**

Not applicable

- 14. Were these rules previously made as emergency rules?**

No

Notices of Final Rulemaking

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSURE

ARTICLE 9. NURSING CARE INSTITUTIONS

Section

R9-10-901. Definitions

R9-10-905. Staff and Volunteers

R9-10-908. Admission

ARTICLE 9. NURSING CARE INSTITUTIONS

R9-10-901. Definitions

No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. “Anniversary date” means the annual recurrence of the date of an event.

~~6-7.~~ No change

~~7-8.~~ No change

~~8-9.~~ No change

~~9-10.~~ No change

~~10-11.~~ No change

~~11-12.~~ No change

~~12-13.~~ No change

~~13-14.~~ No change

~~14-15.~~ No change

~~15-16.~~ No change

~~16-17.~~ No change

~~17-18.~~ No change

~~18-19.~~ No change

~~19-20.~~ No change

~~20-21.~~ No change

~~21-22.~~ No change

~~22-23.~~ No change

~~23-24.~~ No change

~~24-25.~~ No change

~~25-26.~~ No change

~~26-27.~~ No change

~~27-28.~~ No change

~~28-29.~~ No change

~~29-30.~~ No change

~~30-31.~~ No change

~~31-32.~~ No change

~~32-33.~~ No change

~~33-34.~~ No change

~~34-35.~~ No change

~~35-36.~~ No change

~~36-37.~~ No change

~~37-38.~~ No change

~~38-39.~~ No change

~~39-40.~~ No change

~~40-41.~~ No change

~~41-42.~~ No change

~~42-43.~~ No change

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43-44. No change
44-45. No change
45-46. No change
46-47. No change
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89-90. No change
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91-92. No change
92-93. No change
93-94. No change
94-95. No change
95-96. No change
96-97. No change
97-98. No change

R9-10-905. Staff and Volunteers

- A.** No change
1. No change
 2. No change

Notices of Final Rulemaking

3. No change
4. No change
5. No change
6. No change
7. No change
8. ~~A staff member or a volunteer submits one of the following as evidence of freedom from infectious pulmonary tuberculosis at the start of employment or volunteer service and every 12 months from the starting date of employment or volunteer service:~~
 - a. ~~Documentation of a negative Mantoux skin test or other test for tuberculosis recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer, administered within six months of the starting date of employment or volunteer service;~~
 - b. ~~If the staff member or volunteer had a test result positive for infectious pulmonary tuberculosis, a physician's written statement dated within six months of the starting date of employment or volunteer service, that the staff member is free from infectious pulmonary tuberculosis; or~~
 - e. ~~Documentation of a chest x-ray negative for infectious pulmonary tuberculosis dated within six months of the starting date of employment or volunteer service;~~
8. On or before the starting date of employment or volunteer service, a staff member or volunteer submits one of the following as evidence of freedom from infectious pulmonary tuberculosis:
 - a. Documentation of a negative Mantoux skin test or other test for tuberculosis recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer that includes the date and the type of test, administered within six months before the starting date of employment or volunteer service; or
 - b. A statement written and dated by a physician, physician assistant, or registered nurse practitioner within six months before the starting date of employment or volunteer service, that the staff member or volunteer is free from infectious pulmonary tuberculosis;
9. Every 12 months after the date of testing or date of the written statement by a physician, physician assistant, or registered nurse practitioner, a staff member or volunteer submits one of the following as evidence of freedom from infectious pulmonary tuberculosis:
 - a. Documentation of a negative Mantoux skin test or other test recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer that includes the date and the type of test, administered within 30 days before the anniversary date of the most recent test or written statement; or
 - b. A statement written and dated by a physician, physician assistant, or registered nurse practitioner within 30 days before the anniversary date of the last written statement, that the staff member or volunteer is free from infectious pulmonary tuberculosis;
- 9-10. A record for a staff member and volunteer is maintained that includes:
 - a. An application ~~including~~ completed by the staff member or volunteer that includes the date of employment or volunteer service and the first working day or first day of volunteer service;
 - b. Verification of orientation and, if applicable, certification and licensure;
 - c. Documentation that the staff member or volunteer is free from infectious pulmonary tuberculosis as required in subsection (A)(8); and
 - d. If applicable, documentation of compliance with the fingerprinting requirements in A.R.S. § 36-411;
- ~~10-11.~~ A staff member or volunteer record ~~required under subsection (A)(10)~~ and in-service education documentation ~~required under subsection (A)(6)~~ ~~is~~ are provided to the Department for review:
 - a. For a current staff member ~~and~~ or volunteer, as soon as possible but not more than two hours from the time of the Department's request; and
 - b. For a staff member ~~and~~ or volunteer who ~~are~~ is not currently working or providing volunteer services in the nursing care institution, within two hours from the Department's request; ~~and~~
- ~~11-12.~~ A staff member or volunteer record and in-service education documentation ~~is~~ are maintained by the nursing care institution for at least two years after the last date of volunteer service or work.

- B.** No change
C. No change
D. No change

R9-10-908. Admission

No change

1. No change
2. No change
3. No change
4. No change
5. No change

Notices of Final Rulemaking

6. ~~At the time of admission and every 12 months from the date of admission, a resident submits one of the following as evidence of freedom from infectious pulmonary tuberculosis:~~
 - a. ~~Documentation of a negative Mantoux skin test or other test recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer, administered within six months of the date of admission;~~
 - b. ~~If the resident had a test result positive for infectious pulmonary tuberculosis, a physician's written statement dated within six months of admission, that the resident is free from infectious pulmonary tuberculosis; or~~
 - e. ~~Documentation of a chest x-ray negative for infectious pulmonary tuberculosis dated within six months of admission; and~~
6. On or before the time of admission, a resident submits one of the following as evidence of freedom from infectious pulmonary tuberculosis:
 - a. Documentation of a negative Mantoux skin test or other test recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer that includes the date and the type of test, administered within six months before the date of admission; or
 - b. A statement written and dated by a physician, physician assistant, or registered nurse practitioner within six months before admission, that the resident is free from infectious pulmonary tuberculosis;
7. Every 12 months after the date of testing or date of the written statement by a physician, physician assistant, or registered nurse practitioner, a resident submits one of the following as evidence of freedom from infectious pulmonary tuberculosis:
 - a. Documentation of a negative Mantoux skin test or other test recommended by the U.S. Centers for Disease Control and Prevention or the tuberculosis control officer that includes the date and the type of test, administered within 30 days before the anniversary date of the most recent test or written statement; or
 - b. A statement written and dated by a physician, physician assistant, or registered nurse practitioner within 30 days before the anniversary date of the most recent written statement, that the resident is free from infectious pulmonary tuberculosis;
8. A resident who transfers from a nursing care institution to another nursing care institution is not required to be retested for tuberculosis or provide another written statement by a physician, physician assistant, or registered nurse practitioner if:
 - a. Fewer than 12 months have passed since the resident was tested for tuberculosis or since the date of the written statement; and
 - b. The documentation of freedom from infectious pulmonary tuberculosis required in subsection (6) accompanies the resident at the time of transfer; and
- 7.9. No change

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 19. DEPARTMENT OF HEALTH SERVICES
VITAL RECORDS AND STATISTICS

PREAMBLE

- 1. Sections Affected**
R9-19-412
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statutes: A.R.S. §§ 36-301, 36-302, 36-303, and 36-342
Implementing statute: A.R.S. § 35-142(I)
- 3. The effective date of the rule:**
October 4, 2003
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 3257, August 2, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 5116, December 20, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Estevan Sandoval, Chief, Office of Vital Records, Assistant State Registrar
Address: Arizona Department of Health Services
Office of Vital Records
1818 W. Adams
Phoenix, AZ 85007
Telephone: (602) 364-1227
Fax: (602) 364-1257
E-mail: esandov@hs.state.az.us
or
Name: Kathleen Phillips, Rules Administrator
Address: Arizona Department of Health Services
1740 W. Adams, Suite 102
Phoenix, AZ 85007
Telephone: (602) 542-1264
Fax: (602) 364-1150
E-mail: kphilli@hs.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking is authorized under A.R.S. § 35-142(I), which allows a state agency to accept credit cards for the payment of any amount due to that agency, its agent, or the state. The Arizona Department of Health Services (Department) is amending R9-19-412 to add the credit card to the list of acceptable methods of payment for a copy of a vital record and delete the personal check from the list of acceptable payment methods. The Department is amending R9-19-412 to provide timely customer service to a person requesting a copy of a vital record and eliminate the costs of accepting personal checks, processing personal checks returned to the Department for insufficient funds, and returning requests for copies of vital records to customers. The amended rule conforms to current statutory authority, rulemaking format and style requirements, industry practice, and departmental policy.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None

Notices of Final Rulemaking

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The preliminary summary of the economic, small business, and consumer impact:

This rulemaking enables the Department to accept the use of credit cards as a method of paying fees for copies of vital records. A.R.S. § 35-142(I) allows a state agency to accept credit cards for the payment of any amount due to that agency, its agent, or the state. The Department is amending R9-19-412 to add the credit card to the list of acceptable methods of payment for a copy of a vital record and delete the personal check from the list of acceptable payment methods. This rulemaking directly impacts any person who requests a copy of a vital record from the Department because the person will no longer be able to pay for a copy of a vital record with a personal check. The amended rule is expected to have a minimal impact on a person who requests a copy of a vital record. The Department will incur substantial costs to implement a credit card system at the Office of Vital Records. However, the costs to the Department will be offset because the Department will no longer expend time accepting personal checks, processing personal checks returned to the Department for insufficient funds, and returning requests for copies of vital records to customers. In eliminating the acceptance of personal checks and allowing the acceptance of credit cards, the Department will provide timely customer services to a person who requests a copy of a vital record.

10. A description of the changes made between the proposed rule, including supplemental notices, and final rule (if applicable):

Added "cashier's check" to R9-19-412 to clarify the business practice of accepting a cashier's check as cash.

Minor grammatical and format changes were made at the request of the Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:

There were no comments on the rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rule:

None

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 19. DEPARTMENT OF HEALTH SERVICES
VITAL RECORDS AND STATISTICS**

ARTICLE 4. ACCESS TO RECORDS; COPIES; FEES

Section

R9-19-412. Payment of fees Fees

ARTICLE 4. ACCESS TO RECORDS; COPIES; FEES

R9-19-412. Payment of fees Fees

~~All fees shall be paid at the time of application for the records. Fees shall be paid before certified copies are delivered to the applicant. If fees are paid in other than cash, certified check or money order sufficient time for personal checks to clear shall be allowed to elapse prior to delivering copies to the applicant.~~

Before the Department issues a copy of a vital record, the person requesting the copy shall pay any fee required in this Chapter by cash, cashier's check, certified check, money order, or credit card.

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

PREAMBLE

- 1. Sections Affected**
R9-22-714
- Rulemaking Action**
Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 36-2903.01
Implementing statute: A.R.S. § 36-2904
- 3. The effective date of the rule:**
October 4, 2003
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 9 A.A.R. 138, January 17, 2003
Notice of Proposed Rulemaking: 9 A.A.R. 228, January 31, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Barb Ledder, Federal and State Policy Manager
Address: AHCCCS
Office of Policy Analysis and Coordination
801 E. Jefferson, Mail Drop 4200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 256-6756
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Administration has made the following changes to R9-22-714 to clarify reimbursement to providers for covered services:
 - *Subsection (A)* – This subsection is amended to clarify that, as a prerequisite to receiving reimbursement for a covered service from the Administration or an AHCCCS contractor, a provider must sign a provider agreement with the Administration.
 - *Subsection (B)* – This subsection is deleted to be consistent with statute and federal law.
 - *Subsections (B) and (C)* – These subsections are new and are modeled on Medicare language in 42 CFR 415.102 and 42 CFR 415.130.
 - *Subsection (B)* - This subsection clarifies that reimbursement is made only when the:
 - Provider personally furnishes the service to a specific member,
 - Service contributes directly to the diagnosis or treatment of a specific member, and
 - Service ordinarily requires performance by the type of provider seeking reimbursement.
 - *Subsection (C)* – This subsection describes the specific pathology services that are reimbursed by the Administration or a contractor.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
Report No. A98-02, Hospital Based Pathology Services, Arizona Health Care Cost Containment System, Office of Program Integrity, December 1998. AHCCCS relied on this report as discussed in the Preamble. A copy of the report may be obtained by contacting Barb Ledder by letter, phone, or fax at the location listed in item #5.

Notices of Final Rulemaking

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The amended rule affects providers who receive reimbursement from the Administration or an AHCCCS contractor for services provided to an AHCCCS eligible person. In addition, the rule specifically addresses reimbursement to the 155 pathologists in Arizona who are in the AHCCCS provider registration system as of April 2003. The rule clarifies that the Administration or a contractor will reimburse a pathologist only for a service that is directly performed by the pathologist and contributes directly to the diagnosis or treatment of a specific member, is personally furnished by the provider to a specific member, and ordinarily requires performance by the type of provider seeking reimbursement. Pathologists also provide indirect pathology services to hospitals and those services include supervision of lab technicians, calibration of laboratory equipment, and training of physicians.

The Administration estimates that the Administration and its contractors will not be liable for the cost of indirect pathology claims of up to \$250,000 annually since the Administration and its contractors will only pay for a pathology service that meets the requirements of the amended rule. This estimate consists of up to \$17,500 annually for which the Administration would not be liable and up to \$232,500 annually for which AHCCCS contractors would not be liable. The \$250,000 estimate is equal to approximately a quarter of the \$1,000,436 paid by the Administration and its contractors to providers for indirect pathology services during the four-year period from January 1994 through December 1997. The results of the four-year review are included in AHCCCS Report No. A98-02, December 1998, entitled Hospital Based Pathology Services.

The distinction between direct and indirect pathology services and how the services are reimbursed is a critical one. Under the amended rule, pathologists will continue to be reimbursed by the Administration or a contractor for a service that is directly performed by the pathologist and contributes directly to the diagnosis or treatment of a specific member, is personally furnished by the provider to a specific member, and ordinarily requires performance by the type of provider seeking reimbursement. These direct pathology services include evaluation and testing of anatomical tissue, samples, blood banking, and other services that require performance by a physician, and clinical consultations and interpretations requested by a patient's attending physician.

Pathologists also provide indirect pathology services to hospitals. Indirect pathology services include supervision of lab technicians, calibration of laboratory equipment, and training of physicians. These indirect pathology services are necessary for a hospital to maintain its accreditation. Payment to a pathologist from a hospital for an indirect pathology service is based on the contractual and reimbursement arrangement between the hospital and the pathologist. The Administration does not have statutory authority to determine the nature of a reimbursement arrangement between a hospital and a pathologist.

That being said, the Administration uses hospital-specific data, which includes indirect service costs, in calculating the tiered per diem rate that is paid to a hospital for each day that an AHCCCS eligible person is in the hospital. By including the cost of indirect services in the tiered per diem payment made to a hospital, the Administration ensures that payment is made once to a hospital for an indirect service and avoids making a duplicative payment to a pathologist for the same service. AHCCCS contractors also pay a hospital's indirect service costs by negotiating their own reimbursement arrangements with hospitals or, in the absence of a contract, using the Administration's tiered per diem rate.

While most pathologists billed the Administration or its contractors for the cost of direct pathology services, a much smaller number of pathologists were paid a substantial amount for indirect pathology services. During the four-year period covered in AHCCCS Report No. A98-02, almost 95 percent of the pathologists (374 of 395 providers) who were paid for indirect services were paid relatively small amounts (\$0 to \$1,000). Less than 3 percent of pathologists (11 of 395 providers) were paid \$10,000 or more during the four-year period.

The amended rule is needed to prevent inappropriate payments to a pathologist who seeks reimbursement from the Administration or its contractors for services that were not directly provided by the pathologist. The rule is also amended in response to the Governor's Regulatory Review Council ruling that the Administration's payment practice for pathologists constitutes a rule. Finally, the Administration is filing the rule to address an October 9, 2002 judgment in the Superior Court in Maricopa County requiring the Administration and its contractors to pay for claims for indirect pathology services from June 1, 1999 until "the agency promulgates a rule barring such coverage, or the agency identifies an existing statute or rule that specifically disallows coverage of such services." It should be noted that as of April 14, 2003, the Administration had paid \$456.73 on 33 claims for three pathologists for indirect pathology services rendered since June 1, 1999.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

The following changes were made to the rule language to make the rule easier to understand. In addition to the changes listed in the following chart, the Administration made other minor technical and grammatical changes to make the rule more clear, concise, and understandable.

Notices of Final Rulemaking

Proposed	Final	Description of change
(B)	N/A	Deleted to be consistent with statute. Subsection (B) is not consistent with a statutory change that was passed in 2001. Conforming changes in rule were not made and this change makes rule consistent with statute.
(C)(2)	(B)(2)	Changed "individual" to "specific" to use like terms in (B)(1) and (B)(2)
(D)	(C)	Changed "professional billing" to "reimbursement"
(D)(1)	(C)(1)	Deleted "and surgery"
(D)(2)	(C)(2)	Changed "and" to "or"
(E)	(C)(3)	Moved subsection (E) into (C)(3)
(E)(1)	(C)(3)(a)	Added "or primary care physician"
(F)	(C)(4)	Moved subsection (F) into (C)(4)
(F)(1)	(C)(4)(a)	Added "or primary care physician"
(D)(2), (D)(3), and (D)(4)	(C)(2), (C)(3)(e), and (C)(4)(d)	Changed "fee-for-service fee schedule" to "capped fee-for-service schedule"

11. A summary of the principal comments and the agency response to them:

The agency received comments from an attorney representing five hospital-based pathology groups including Western Pathology Associates, Scottsdale Pathology Associates, Tucson Pathologists, Pima Pathologists and Canyon Pathologists. The following chart summarizes the principal comments from the March 6, 2003 letter of Attorney John R. Dacey of Gammage and Burnham and the Administration's response and action. A copy of the letter has been filed with the rule package.

#	Principal Comment	Administration Response	Action
1.	<u>Rule is unnecessary and unwarranted</u>	This rule is necessary to: <ul style="list-style-type: none"> • Clarify that the Administration and its contractors do not directly pay pathologists for indirect pathology services. Payment from a hospital to a pathologist for an indirect pathology service is based on the contractual and reimbursement arrangement between the hospital and the pathologist; • Prevent the possibility of duplicate payments for the same service; • Address a March 2000 Governor's Regulatory Review Council ruling that the Administration's payment practice for pathologists constitutes a rule; and • Finalize compliance with a court order requiring the Administration to pay pathologists for indirect pathology services until a rule is promulgated. 	No change to rule
2.	<u>Rule treats pathologists differently</u> Rule treats pathologists differently than other physicians without a rational basis. AHCCCS statutes and rules do not adopt Medicare criteria, as the reimbursement methodology for other AHCCCS providers. Agency should explain this disparate treatment of pathologists.	AHCCCS has chosen to model the rule, in part but not in total, on Medicare regulations. AHCCCS follows Medicare regulations, when appropriate. Subsections (A) and (B) apply to all AHCCCS providers. The reason that subsection (C) applies specifically to pathologists is because Medicare regulations separately address pathology claims. Medicare regulations do not separately address "other providers." The other reason that pathologists are separately addressed in the rule is because, in March 2000, the Governor's Regulatory Review Council ruled that the Administration's payment practice for pathologists constitutes a rule.	No change to rule

Notices of Final Rulemaking

3.	<p><u>How will pathologists be reimbursed if rule is promulgated?</u> Rule results in hospital based pathologists providing substantial services without compensation. AHCCCS should determine how pathologists would be compensated for “hands-off” services including medical direction and supervision of the lab? Will hospitals compensate pathologists? Will hospitals recover costs through increase in per diem rates? Rule should include sufficient protection of the pathologist’s legitimate interests in compensation for services.</p>	<p>Under the amended rule, a pathologist will continue to be reimbursed by the Administration or an AHCCCS contractor for a pathology service that is directly performed by the pathologist.</p> <p>Payment to a pathologist from a hospital for indirect pathology services is determined by the reimbursement arrangement between the hospital and the pathologist. In addition, the amended rule does not prohibit a pathologist from contracting directly with an AHCCCS contractor.</p> <p>That being said, the Administration uses hospital-specific data, which includes indirect service costs, in calculating the tiered per diem rate that is paid to a hospital for each day that an AHCCCS-eligible person is in the hospital. By including the cost of indirect services in the tiered per diem payment paid to a hospital, the Administration ensures that payment is made once to a hospital for an indirect service and avoids making a duplicative payment to a pathologist for the same service. AHCCCS contractors also pay a hospital’s indirect service costs by negotiating their own reimbursement arrangements with hospitals or, in the absence of a contract, using the Administration’s tiered per diem rate.</p>	No change to rule
4.	<p><u>Health Plans cannot reimburse pathologists</u> Rule restricts the ability of the health plans to reimburse pathologists in the manner they see fit. There is no justification to restrict the way health plans choose to reimburse for those services.</p>	<p>AHCCCS contractors negotiate their own reimbursement arrangements with hospitals or, in the absence of a contract, use the Administration’s tiered per diem rate. Nothing prohibits a pathologist from negotiating an alternate payment arrangement directly with an AHCCCS contractor.</p>	No change to rule
5.	<p><u>AHCCCS should use own data</u> Agency’s Notice of Proposed Rulemaking states that we “anticipate a nominal impact...” This ignores agency data and issues pending in litigation. AHCCCS should not pretend impact is nominal just because pathologists have not been billing in recent years. Before rule goes forward, AHCCCS should examine its own claims data and encounter data.</p>	<p>The data in the final EIS is based on AHCCCS Report No. A98-02, which examined four years of pathology services submitted to AHCCCS from January 1994 through December 1997. The Report included a review of fee-for service claims and encounters.</p>	No change to rule
6.	<p><u>AHCCCS must consider variances between hospitals</u> AHCCCS must consider that some hospitals serve a disproportionate share of AHCCCS patients. Even among these hospitals there are wide variances between rural and urban, between trauma centers and hospitals, and between contractual relationships for hospitals and pathologists.</p>	<p>As described above, A.R.S. § 36-2903.01(H) requires the Administration to use a tiered per diem payment methodology. Indirect services are factored into the tiered per diem payment through the use of <u>hospital-specific data</u> contained in Medicare Cost Reports.</p>	No change to rule

Notices of Final Rulemaking

7.	<u>AHCCCS must consider uniqueness of pathologists</u> Rules must take into account the uniqueness of pathology practice. Pathologists spend most of their time in labs dealing with tests and analyzing data not <i>personally</i> furnishing services to patients. Rule prohibits reimbursement and does not assure compensation for services.	As previously stated in number 3, payment to a pathologist from a hospital for indirect pathology services is determined by the reimbursement arrangement between the hospital and the pathologist. In addition, the amended rule does not prohibit a pathologist from contracting directly with an AHCCCS contractor. Under the amended rule, the Administration and its contractors will take into consideration a hospital's indirect service costs in making payments to a hospital.	No change to rule
8.	<u>AHCCCS must consider the following documents in rulemaking</u> • AHCCCS Report No. A98-02, December 1998 • Arizona Society of Pathologists, v. AHCCCS (2002) Arizona Court of Appeals, Div 1 • October 9, 2002 Final Judgment, Superior Court of Maricopa County	The Administration has considered the requested documents.	No change to rule

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 7. STANDARD FOR PAYMENTS

Section

R9-22-714. Payments to Providers

ARTICLE 7. STANDARD FOR PAYMENTS

R9-22-714. Payments to Providers

- A.** Provider agreement. ~~As a prerequisite for receiving reimbursement for~~ The Administration or a contractor shall not reimburse a covered services service provided to a member, ~~a unless the provider shall sign~~ has signed a provider agreement with the Administration that establishes the terms and conditions of participation and payment under A.R.S. § 36-2904.
- B.** ~~This subsection does not apply to reimbursement of emergency services and services provided during PPC under Article 2 of this Chapter.~~
- B.** Provider reimbursement. The Administration or a contractor shall reimburse a provider for a service furnished to a member only if:
 1. The provider personally furnishes the service to a specific member.
 2. The service contributes directly to the diagnosis or treatment of a specific member, and
 3. The service ordinarily requires performance by the type of provider seeking reimbursement.
- C.** Reimbursement for a pathology service. Unless otherwise specified in a contract, the Administration or a contractor shall reimburse a pathologist for a pathology service furnished to a member only if the other requirements in this Section are met and the service is:
 1. A surgical pathology service;

Notices of Final Rulemaking

2. A specific cytopathology, hematology, or blood banking pathology service that requires performance by a physician and is listed in the capped fee-for-service schedule;
3. A clinical consultation service that:
 - a. Is requested by the member's attending physician or primary care physician,
 - b. Is related to a test result that is outside the clinically significant normal or expected range in view of the condition of the member,
 - c. Results in a written narrative report included in the member's medical record,
 - d. Requires the exercise of medical judgment by the consultant pathologist, and
 - e. Is listed in the capped fee-for-service schedule; or
4. A clinical laboratory interpretative service that:
 - a. Is requested by the member's attending physician or primary care physician,
 - b. Results in a written narrative report included in the member's medical record,
 - c. Requires the exercise of medical judgment by the consultant pathologist, and
 - d. Is listed in the capped fee-for-service schedule.

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 27. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
HEALTH CARE FOR PRIVATE EMPLOYER GROUPS/AHCCCS ADMINISTERED

PREAMBLE

- 1. Sections Affected** **Rulemaking Action**
R9-27-708 New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 36-2912
Implementing statute: A.R.S. § 36-2912
- 3. The effective date of the rule:**
October 4, 2003
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 9 A.A.R. 138, January 17, 2003
Notice of Proposed Rulemaking: 9 A.A.R. 231, January 31, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Barb Ledder, Federal and State Policy Manager
Address: AHCCCS
Office of Policy Analysis and Coordination
801 E. Jefferson, Mail Drop 4200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 256-6756
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Administration is adding a new Section (R9-27-708) to clarify that the Administration or a contractor are subject to the requirements in R9-22-714 regarding reimbursement to providers for covered services.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
Not applicable
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**
The amended rule affects providers who receive reimbursement from the Administration or a contractor for services provided to a Healthcare Group (HCG) member. Under this rule, the Administration or a contractor will reimburse a pathologist only for a service that is directly performed by the pathologist and contributes directly to the diagnosis or treatment of a specific member, is personally furnished by the provider to a specific member, and ordinarily requires performance by the type of provider seeking reimbursement. Pathologists also provide indirect pathology services to hospitals and those services include supervision of lab technicians, calibration of laboratory equipment, and training of physicians. The Administration and its contractors will not be liable for an undetermined amount for the cost of indirect pathology services.

The distinction between direct and indirect pathology services and how the services are reimbursed is a critical one. Under the amended rule, pathologists will continue to be reimbursed by the Administration or a contractor for a service that is directly performed by the pathologist and contributes directly to the diagnosis or treatment of a specific member, is personally furnished by the provider to a specific member, and ordinarily requires performance by the type of provider seeking reimbursement. These direct pathology services include evaluation and testing of anatomical tissue, samples, blood banking, and other services that require performance by a physician, and clinical consultations and interpretations requested by a patient's attending physician.

Notices of Final Rulemaking

Pathologists also provide indirect pathology services to hospitals. Indirect pathology services include supervision of lab technicians, calibration of laboratory equipment, and training of physicians. These indirect pathology services are necessary for a hospital to maintain its accreditation. Payment to a pathologist from a hospital for an indirect pathology service is based on the contractual and reimbursement arrangement between the hospital and the pathologist. The Administration does not have statutory authority to determine the nature of a reimbursement arrangement between a hospital and a pathologist.

That being said, the Administration uses hospital-specific data, which includes indirect service costs, in calculating the tiered per diem rate that is paid to a hospital for each day that an eligible person is in the hospital. By including the cost of indirect services in the tiered per diem payment made to a hospital, the Administration ensures that payment is made once to a hospital for an indirect service and avoids making a duplicative payment to a pathologist for the same service. Contractors also pay a hospital's indirect service costs by negotiating their own reimbursement arrangements with hospitals or, in the absence of a contract, using the Administration's tiered per diem rate.

The amended rule is needed to prevent inappropriate payments to a pathologist who seeks reimbursement from the Administration or its contractors for services that were not directly provided by the pathologist. The rule is also amended in response to the Governor's Regulatory Review Council ruling that the Administration's payment practice for pathologists constitutes a rule. Finally, the Administration is filing the rule to address an October 9, 2002 judgment in the Superior Court in Maricopa County requiring the Administration and its contractors to pay for claims for indirect pathology services from June 1, 1999 until "the agency promulgates a rule barring such coverage, or the agency identifies an existing statute or rule that specifically disallows coverage of such services."

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

None

11. A summary of the principal comments and the agency response to them:

The agency received comments from an attorney representing five hospital-based pathology groups including Western Pathology Associates, Scottsdale Pathology Associates, Tucson Pathologists, Pima Pathologists and Canyon Pathologists. The following chart summarizes the principal comments from the March 6, 2003 letter of Attorney John R. Dacey of Gammage and Burnham and the Administration's response and action. The chart is included in the response to this question since R9-27-708 cross references to R9-22-714. A copy of the letter has been filed with the rule package.

#	Principal Comment	Administration Response	Action
1.	<u>Rule is unnecessary and unwarranted</u>	This rule is necessary to: <ul style="list-style-type: none"> • Clarify that the Administration and its contractors do not directly pay pathologists for indirect pathology services. Payment from a hospital to a pathologist for an indirect pathology service is based on the contractual and reimbursement arrangement between the hospital and the pathologist; • Prevent the possibility of duplicate payments for the same service; • Address a March 2000 Governor's Regulatory Review Council ruling that the Administration's payment practice for pathologists constitutes a rule; and • Finalize compliance with a court order requiring the Administration to pay pathologists for indirect pathology services until a rule is promulgated. 	No change to rule
2.	<u>Rule treats pathologists differently</u> Rule treats pathologists differently than other physicians without a rational basis. AHCCCS statutes and rules do not adopt Medicare criteria, as the reimbursement methodology for other AHCCCS providers. Agency should explain this disparate treatment of pathologists.	AHCCCS has chosen to model the rule, in part but not in total, on Medicare regulations. AHCCCS follows Medicare regulations, when appropriate. Subsections (A) and (B) apply to all AHCCCS providers. The reason that subsection (C) applies specifically to pathologists is because Medicare regulations separately address pathology claims. Medicare regulations do not separately address "other providers." The other reason that pathologists are separately addressed in the rule is because, in March 2000, the Governor's Regulatory Review Council ruled that the Administration's payment practice for pathologists constitutes a rule.	No change to rule

Notices of Final Rulemaking

3.	<p><u>How will pathologists be reimbursed if rule is promulgated?</u> Rule results in hospital based pathologists providing substantial services without compensation. AHCCCS should determine how pathologists would be compensated for “hands-off” services including medical direction and supervision of the lab? Will hospitals compensate pathologists? Will hospitals recover costs through increase in per diem rates? Rule should include sufficient protection of the pathologist’s legitimate interests in compensation for services.</p>	<p>Under the amended rule, a pathologist will continue to be reimbursed by the Administration or an AHCCCS contractor for a pathology service that is directly performed by the pathologist.</p> <p>Payment to a pathologist from a hospital for indirect pathology services is determined by the reimbursement arrangement between the hospital and the pathologist. In addition, the amended rule does not prohibit a pathologist from contracting directly with an AHCCCS contractor.</p> <p>That being said, the Administration uses hospital-specific data, which includes indirect service costs, in calculating the tiered per diem rate that is paid to a hospital for each day that an AHCCCS-eligible person is in the hospital. By including the cost of indirect services in the tiered per diem payment paid to a hospital, the Administration ensures that payment is made once to a hospital for an indirect service and avoids making a duplicative payment to a pathologist for the same service. AHCCCS contractors also pay a hospital’s indirect service costs by negotiating their own reimbursement arrangements with hospitals or, in the absence of a contract, using the Administration’s tiered per diem rate.</p>	No change to rule
4.	<p><u>Health Plans cannot reimburse pathologists</u> Rule restricts the ability of the health plans to reimburse pathologists in the manner they see fit. There is no justification to restrict the way health plans choose to reimburse for those services.</p>	<p>AHCCCS contractors negotiate their own reimbursement arrangements with hospitals or, in the absence of a contract, use the Administration’s tiered per diem rate. Nothing prohibits a pathologist from negotiating an alternate payment arrangement directly with an AHCCCS contractor.</p>	No change to rule
5.	<p><u>AHCCCS should use own data</u> Agency’s Notice of Proposed Rulemaking states that we “anticipate a nominal impact...” This ignores agency data and issues pending in litigation. AHCCCS should not pretend impact is nominal just because pathologists have not been billing in recent years. Before rule goes forward, AHCCCS should examine its own claims data and encounter data.</p>	<p>The data in the final EIS for R9-22-714 is based on AHCCCS Report No. A98-02, which examined four years of pathology services submitted to AHCCCS from January 1994 through December 1997. The Report included a review of fee-for service claims and encounters.</p>	No change to rule
6.	<p><u>AHCCCS must consider variances between hospitals</u> AHCCCS must consider that some hospitals serve a disproportionate share of AHCCCS patients. Even among these hospitals there are wide variances between rural and urban, between trauma centers and hospitals, and between contractual relationships for hospitals and pathologists.</p>	<p>As described above, A.R.S. § 36-2903.01(H) requires the Administration to use a tiered per diem payment methodology. Indirect services are factored into the tiered per diem payment through the use of <u>hospital-specific data</u> contained in Medicare Cost Reports.</p>	No change to rule

Notices of Final Rulemaking

7.	<u>AHCCCS must consider uniqueness of pathologists</u> Rules must take into account the uniqueness of pathology practice. Pathologists spend most of their time in labs dealing with tests and analyzing data not <i>personally</i> furnishing services to patients. Rule prohibits reimbursement and does not assure compensation for services.	As previously stated in number 3, payment to a pathologist from a hospital for indirect pathology services is determined by the reimbursement arrangement between the hospital and the pathologist. In addition, the amended rule does not prohibit a pathologist from contracting directly with an AHCCCS contractor. Under the amended rule, the Administration and its contractors will take into consideration a hospital's indirect service costs in making payments to a hospital.	No change to rule
8.	<u>AHCCCS must consider the following documents in rulemaking</u> • AHCCCS Report No. A98-02, December 1998 • Arizona Society of Pathologists, v. AHCCCS (2002) Arizona Court of Appeals, Div 1 • October 9, 2002 Final Judgment, Superior Court of Maricopa County	The Administration has considered the requested documents.	No change to rule

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 27. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
HEALTH CARE FOR PRIVATE EMPLOYER GROUPS/AHCCCS ADMINISTERED**

ARTICLE 7. STANDARD FOR PAYMENTS

Section

R9-27-708. Payments to Providers

ARTICLE 7. STANDARD FOR PAYMENTS

R9-27-708. Payments to Providers

The Administration or a contractor shall pay providers under A.A.C. R9-22-714.

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

1. Sections Affected

R9-28-101
R9-28-102
R9-28-103
R9-28-107

Rulemaking Action

Amend
Amend
Amend
Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-2932, 36-2936, and 36-2945

Implementing statutes: A.R.S. §§ 36-2936 and 36-2945

3. The effective date of the rules:

October 4, 2003

4. A list of all previous notices appearing in the Register addressing the rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 1205, April 11, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 1384, May 9, 2003

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Barbara Ledder

Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4580

Fax: (602) 253-9115

6. An explanation of the rules, including the agency's reasons for initiating the rules:

The Administration is making changes to 9 A.A.C. 28, Article 1 to conform to state statute and to provide additional clarity and conciseness to existing rule language. Following is an explanation of the changes:

9 A.A.C. 28, Article 1, Definitions

The Administration amended and deleted definitions to improve the clarity and conciseness of the rule language and to correct outdated references to rule and statute.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Administration did not review any study relevant to these rules.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The contractors, members, providers, and AHCCCS are nominally impacted by the changes to the rule language. These rules define specific terms used in AHCCCS' long-term care rules. The Administration is amending these rules to correct references to state statute and rule and to make the rules more clear, concise, and understandable.

It is anticipated that the private sector, including small businesses and political subdivisions will not be impacted since the proposed rule language changes are intended to streamline and clarify the existing rules. The Administration, contractors, providers, and members will benefit from the increased clarity of the rule language.

Notices of Final Rulemaking

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the principal comments and the agency response to them:

No comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 1. DEFINITIONS

Section

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ARTICLE 1. DEFINITIONS

R9-28-101. General Definitions

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

Definition	Section or Citation
“Administration”	A.R.S. § 36-2931
“ADHS”	R9-22-112
“Aggregate”	R9-22-107
“AHCCCS”	R9-22-101
“AHCCCS Registered Provider”	R9-22-101
“Algorithm”	R9-28-104
“ALTCS”	R9-28-101
“ALTCS acute care services”	R9-28-104
“Alternative HCBS setting”	R9-28-101
“Ambulance”	R9-22-102
“Applicant”	R9-22-101
“Bed hold”	R9-28-102
“Behavior intervention”	R9-28-102
“Behavior management services”	R9-20-101
“Behavioral health evaluation”	R9-22-112
“Behavioral health medical practitioner”	R9-22-112
“Behavioral health professional”	R9-20-101
“Behavioral health service”	R9-20-101
“Behavioral health technician”	R9-20-101
“Billed charges”	R9-22-107
“Board-eligible for psychiatry”	R9-22-112

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"Capped fee-for-service"	R9-22-101
"Case management plan"	R9-28-101
"Case manager"	R9-28-101
"Case record"	R9-22-101
"Categorically-eligible"	R9-22-101
"Certification"	R9-28-105
"Certified psychiatric nurse practitioner"	R9-22-112
"CFR"	R9-28-101
"Clean claim"	R9-20-101 <u>A.R.S. § 36-2904</u>
"Clinical supervision"	R9-22-112
"CMS"	R9-22-101
"Community Spouse"	R9-28-104
"Contract"	R9-22-101
"Contract year"	R9-28-101
"Contractor"	A.R.S. § 36-2901
"County of fiscal responsibility"	R9-28-107
"Covered services"	R9-28-101
"CPT"	R9-22-107
"CSRD"	R9-28-104
"Day"	R9-22-101
"Department"	A.R.S. § 36-2901
"De novo hearing"	42 CFR 431.201
"Developmental disability"	A.R.S. § 36-551
"Diagnostic services"	R9-22-102
"Director"	R9-22-101
"Disenrollment"	R9-22-117
"DME"	R9-22-102
"EPD"	R9-28-301
"Eligible person"	A.R.S. § 36-2931
"Emergency medical services"	R9-22-102
"Encounter"	R9-22-107
"Enrollment"	R9-22-117
"Estate"	A.R.S. § 14-1201
"Facility"	R9-22-101
"Factor"	R9-22-101
"Fair consideration"	R9-28-104
"FBR"	R9-22-101
"Grievance"	R9-22-108
"GSA"	R9-22-101
"Guardian"	R9-22-116 <u>A.R.S. § 14-5311</u>
"HCBS" or "Home and community based services"	A.R.S. §§ 36-2931 and 36-2939
"Health care practitioner"	R9-22-112
"Hearing"	R9-22-108
"Home"	R9-28-101
"Home health services"	R9-22-102
"Hospital"	R9-22-101
"ICF-MR" or "Intermediate care facility for the mentally retarded"	42 CFR 483 Subpart I

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“IHS”	R9-28-101
“IMD”	42 CFR 435.1009 and R9-28-111
“Indian”	42 CFR 36.1
“Institutionalized”	R9-28-104
“Interested Party”	R9-28-106
“JCAHO”	R9-28-101
“License” or “licensure”	R9-22-101
“Medical record”	R9-22-101
“Medical services”	R9-22-101
“Medical supplies”	R9-22-102
“Medically eligible”	R9-28-104
“Medically necessary”	R9-22-101
“Member”	A.R.S. § 36-2931
“Mental disorder”	A.R.S. § 36-501
“MMMNA”	R9-28-104
“Nursing facility” or “NF”	42 U.S.C. 1396r(a)
“Noncontracting provider”	A.R.S. § 36-2931
“Occupational therapy”	R9-22-102
“Partial care”	R9-22-112
“PAS”	R9-28-103
“PASARR”	R9-28-103
“Pharmaceutical service”	R9-22-102
“Physical therapy”	R9-22-102
“Physician”	R9-22-102
“Post-stabilization services”	42 CFR 438.114
“Practitioner”	R9-22-102
“Primary care provider (PCP)”	R9-22-102
“Primary care provider services”	R9-22-102
“Prior authorization”	R9-22-102
“Prior period coverage” or “PPC”	R9-22-107
“Private duty nursing services”	R9-22-102
“Program contractor”	A.R.S. § 36-2931
“Provider”	A.R.S. § 36-2931
“Psychiatrist”	R9-22-112
“Psychologist”	R9-22-112
“Psychosocial rehabilitation”	R9-20-101
“Quality management”	R9-22-105
“Regional behavioral health authority” or “RBHA”	A.R.S. § 36-3401
“Radiology”	R9-22-102
“Reassessment”	R9-28-103
“Redetermination”	R9-28-104
“Referral”	R9-22-101
“Reinsurance”	R9-22-107
“Representative”	R9-28-104
“Respiratory therapy”	R9-22-102
“Respite care”	R9-28-102
“RFP”	R9-22-106

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"Room and board"	R9-28-102
"Scope of services"	R9-22-102 <u>R9-28-102</u>
"Section 1115 Waiver"	A.R.S. § 36-2901
"Speech therapy"	R9-22-102
"Spouse"	R9-28-104
"SSA"	42 CFR 1000.10
"SSI"	R9-22-101
"Subcontract"	R9-22-101
"Utilization management"	R9-22-105
"Ventilator dependent"	R9-28-102

- B.** General definitions. In addition to definitions contained in A.R.S. §§ 36-551, 36-2901, 36-2931, and 9 A.A.C. 22, Article 1, the following words and phrases have the following meanings unless the context of the Chapter explicitly requires another meaning:

"ALTCS" means the Arizona Long-term Care System as authorized by A.R.S. § 36-2932.

"Alternative HCBS setting" means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS including:

For a person with a developmental disability specified in A.R.S. § 36-551:

Community residential setting defined in A.R.S. § 36-551;

Group home defined in A.R.S. § 36-551;

State-operated group home under A.R.S. § 36-591;

Family foster home under 6 A.A.C. 5, Article 58;

Group foster home under R6-5-5903;

Licensed residential facility for a person with traumatic brain injury under A.R.S. § 36-2939;

Adult therapeutic foster home under 9 A.A.C. 20, Articles 1 and 15;

Level 2 and Level 3 behavioral health agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and

Rural substance abuse transitional agencies under 9 A.A.C. 20, Articles 1 and 14; and

For a person who is elderly or physically disabled under R9-28-301, and the facility, setting, or institution is registered with AHCCCS:

Adult foster care homes defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939;

Assisted living home or assisted living center, units only, under A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;

Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939;

Adult therapeutic foster home under 9 A.A.C. 20, Articles 1 and 15;

Level II and Level III behavioral health agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6;

Rural Substance Abuse Transitional Agencies under 9 A.A.C. 20, Articles 1 and 14; and

Alzheimer's treatment assistive living facility demonstration pilot project as specified in Laws 1999, Ch. 313, § 35 as amended by Laws 2001, Ch. 140, § 1.

"Case management plan" means a service plan developed by a case manager that involves the overall management of a member's care, and the continued monitoring and reassessment of the member's need for services.

"Case manager" means a person who is either a degreed social worker, a licensed registered nurse, or a person with a minimum of two years of experience in providing case management services to a person who is elderly and physically disabled or has developmental disabilities.

"Contract year" means the period beginning on October 1 and continuing until September 30 of the following year.

"CFR" means Code of Federal Regulations, unless otherwise specified in this Chapter.

"Covered Services" means the health and medical services described in Articles 2 and 11 of this Chapter as being eligible for reimbursement by AHCCCS.

"Home" means a residential dwelling that is owned, rented, leased, or occupied by a member, at no cost to the member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion of any of these that is licensed or certified by a regulatory agency of the state as a:

Health care institution under A.R.S. § 36-401;

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Residential care institution under A.R.S. § 36-401;
Community residential setting under A.R.S. § 36-551; or
Behavioral health service under 9 A.A.C. 20, Articles 1, 4, 5, and 6.

“IHS” means the Indian Health Service.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

R9-28-102. Covered Services Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

~~“Ambulance” is defined in 9 A.A.C. 22, Article 1.~~

“Bed hold” means a 24-hour per day unit of service that is authorized by an ALTCS case manager or designee during a period of short-term hospitalization or therapeutic leave that meets the requirement specified in 42 CFR 483.12.

“Behavior intervention” means the planned interruption of a member’s inappropriate behavior using techniques such as reinforcement, training, behavior modification, and other systematic procedures intended to result in more acceptable behavior.

~~“Covered services” is defined in 9 A.A.C. 22, Article 1.~~

~~“Diagnostic services is defined in 9 A.A.C. 22, Article 1.~~

~~“DME” means durable medical equipment and is defined in 9 A.A.C. 22, Article 1.~~

~~“Emergency medical services” is defined in 9 A.A.C. 22, Article 1.~~

~~“Home health services” is defined in 9 A.A.C. 22, Article 1.~~

~~“Medical supplies” is defined in 9 A.A.C. 22, Article 1.~~

~~“Occupational therapy” is defined in 9 A.A.C. 22, Article 1.~~

~~“Pharmaceutical service” is defined in 9 A.A.C. 22, Article 1.~~

~~“Physical therapy” is defined in 9 A.A.C. 22, Article 1.~~

~~“Physician” is defined in 9 A.A.C. 22, Article 1.~~

~~“Practitioner” is defined in 9 A.A.C. 22, Article 1.~~

~~“Primary care provider” is defined in 9 A.A.C. 22, Article 1.~~

~~“Primary care provider services” is defined in 9 A.A.C. 22, Article 1.~~

~~“Prior authorization” is defined in 9 A.A.C. 22, Article 1.~~

~~“Private duty nursing services” is defined in 9 A.A.C. 22, Article 1.~~

~~“Radiology” is defined in 9 A.A.C. 22, Article 1.~~

~~“Respiratory therapy” is defined in 9 A.A.C. 22, Article 1.~~

“Respite care” means a short-term service provided in a NF or a home and community based service setting to an individual ~~when~~ if necessary to relieve a family member or other person caring for the individual.

“Room and board” means lodging and meals.

~~“Scope of services” is defined in 9 A.A.C. 22, Article 1~~ means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

~~“Speech therapy” is defined in 9 A.A.C. 22, Article 1.~~

“Ventilator dependent,” for purposes of ALTCS eligibility, means an individual is medically dependent on a ventilator for life support at least ~~6~~ six hours per day and has been dependent on ventilator support as an inpatient in a hospital, NF, or ICF-MR for at least 30 consecutive days.

R9-28-103. Preadmission Screening Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

~~“Case record” is defined in 9 A.A.C. 22, Article 1.~~

~~“Developmental disability” means a disability described~~ is defined in A.R.S. § 36-551.

~~“Guardian” is defined in 9 A.A.C. 22, Article 1.~~

“PAS” means preadmission screening, which is the process of determining an individual’s risk of institutionalization at a NF or ICF-MR level of care, as specified in Article 3 of this Chapter.

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“PASARR” means preadmission screening and annual resident review, which is the 2-step screening process for mental illness and mental retardation as described in A.R.S. § 36-2936. The level I screening is used to identify potentially mentally ill (MI) or mentally retarded (MR) individuals before nursing facility admission. The level II screening is used to make an in-depth assessment of potentially MI or MR individuals referred through the level I screening and to determine the appropriateness of nursing facility care and the need for special services for the MI or MR individual.

“Reassessment” means the process of redetermining PAS eligibility for ALTCS services on an annual or periodic basis, as appropriate, for all members.

R9-28-107. Standards for Payment Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

~~“Aggregate” is defined in 9 A.A.C. 22, Article 1.~~

~~“Billed charges” is defined in 9 A.A.C. 22, Article 1.~~

~~“Capped fee for service” is defined in 9 A.A.C. 22, Article 1.~~

~~“Clean claim” is defined in 9 A.A.C. 22, Article 1.~~

~~“CPT” is defined in 9 A.A.C. 22, Article 1.~~

“County of fiscal responsibility” means the county that is financially responsible for the state’s share of ALTCS funding.

~~“Encounter” is defined in 9 A.A.C. 22, Article 1.~~

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TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

PREAMBLE

- 1. Sections Affected**

R12-5-505	Repeal
R12-5-505	New Section
R12-5-506	Repeal
R12-5-506	New Section
R12-5-516	Repeal
R12-5-534	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 37-132(A)(1)
Implementing statute: A.R.S. § 37-284
- 3. The effective date of the rules:**

October 4, 2003
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 846, March 7, 2003
Notice of Proposed Rulemaking: 9 A.A.R. 1280, April 25, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Richard B. Oxford, Director Land Information, Title & Transfer Division
Address:	Arizona State Land Department 1616 W. Adams Phoenix, AZ 85007
Telephone:	(602) 542-4602
Fax:	(602) 542-5223
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

A.R.S. § 37-284 provides a general process by which conflicting lease applications for leased State Trust surface lands may be processed.

The rules are being amended to clarify the procedure in considering conflicting applications to lease State Trust land (surface only), to define equities to be considered, to require an applicant to submit a statement of equities, and to require an applicant to indicate whether the applicant is offering rental as part of the equity statement, and, if so, the amount.

The amended rules also establish a time for filing a conflicting application on unleased State Trust lands.

The former rules regarding conflicting applications were obsolete, did not address what was expected in an applicant's statement of equity, and did not differentiate between applications for leased land or unleased land.
- 7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Land Department did not review any study relevant to the rules.
- 8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 9. The summary of the economic, small business, and consumer impact:**

The Department is amending rules that address the processing of conflicting applications when two or more applicants apply to lease or use State Trust land (surface estate only) for the same purpose.

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The Department maintains 9,475 active leases, permits, rights of way and sales contracts on 9.3 million acres of the Trusts' surface estate. Of these contracts, 2,674 leases and permits (28%), categorized as Grazing, Commercial, Agriculture, Special Use Permits, U.S. Government and Homesite encompassing 8.9 million acres (96%) are subject to the "conflict application" rules. Collectively, these leases and permits earned \$18.6 million in FY02. The Department receives approximately 450 potentially conflicting applications in these categories annually. A review of Departmental records for the past 25 years reveals an average of nine conflicting application cases are processed by the Department each year.

The requirements of the rules apply equally to each applicant. Costs to the applicant may include an application fee, clerical costs, staff time, and consultant or legal fees to prepare the application and statement of equity. An applicant may incur additional costs if the applicant files an appeal or elects to litigate the Department's decision regarding a conflicting application issue. Other costs to the applicant may include reimbursement to a former lessee for an approved non-removable improvement.

Generally, the Department's costs to process conflicting applications are proportional to the number and complexity of the issues arising from the conflicting application. Costs to the Department include staff time to review an application and supporting data. These costs will increase if Departmental decisions regarding a conflicting application case is appealed or litigated.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The Department published the notice of Proposed Rulemaking in the *Arizona Administrative Register* on April 25, 2003 (Vol. 9, Page 1280). Since that publication, the Department has made clarifying changes under R12-5-506(F). New subsections (4) and (5) were added:

Subsection (4): *The Department shall only accept one bid from each applicant. Once the bid has been submitted, the Department shall not accept a second or substitute bid, nor any changes to the original bid.*

This addition will prevent a bidder from submitting multiple bids or, for some unknown reason, re-submitting or changing the original bid. R12-5-506(F) references "a written bid" and provides that "a bid" be made on forms provided by the Department. The clarifying change in subsection (4) makes it clear that those references mean only one bid may be submitted by a bidder in a round of bidding under (F)(2) and that there can be no second bids, substitute bids or changes to the bid as originally submitted.

Subsection (5): *When bids of two or more applicants are the same and are also the highest bids offered and there is no preferred right, the Department will repeat the bid procedure in accordance with R12-5-506(F)(1) and (2) with the following exceptions, until a single highest bid is submitted:*

(a) *In a call for new bids, the Department will establish the new minimum rental that equals the highest amount offered in the previous bidding.*

(b) *The Department will only accept new bids from the parties who submitted the highest matching bids.*

Subsection (5) clarifies that while there may be multiple "rounds" of bidding, the Department will only accept one bid from each applicant in a round of bidding.

11. A summary of the principal comments and the agency response to them:

No comments were received by the agency.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 5. LEASES

Section

R12-5-505. ~~Application for Land Included under Existing Lease or Permit~~ Time for Filing Conflicting Applications

R12-5-506. ~~Two or More Applications for Lease or Permit~~ Procedure in Processing Conflicting Applications

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R12-5-516. Time for Filing Conflicting Applications Repealed
R12-5-534. Rules of Procedure in Conflicts Repealed

ARTICLE 5. LEASES

R12-5-505. Application for Land Included under Existing Lease or Permit Time for Filing Conflicting Applications

Where an application for lease or permit covers land already under lease or permit for the same purposes, such application will be rejected by the Commissioner to the extent that the lands described therein are included within an existing lease or permit.

- A.** Unleased land. If an application is filed on unleased land, and a proposed lease, permit, or right-of-way document is offered to an applicant for review and signature, the Department shall not accept another application for the same purpose.
- B.** Land under lease for the same purpose. The Department shall not accept a conflicting application for a lease unless the application is filed within the time prescribed by A.R.S. § 37-284.
- C.** Land under permit for the same purpose where the use is exclusive. An applicant shall file a conflicting application for a permit on land for the same purpose within 60 days before expiration of the existing permit.
- D.** For the purpose of this Article, conflicting applications are defined as two or more applications to lease State Trust surface land for the same purpose or two or more permit applications to use State Trust surface land for the same purpose.

R12-5-506. Two or More Applications for Lease or Permit Procedure in Processing Conflicting Applications

Except as otherwise provided by law or specifically by these rules and regulations, if two or more applicants apply for lease or permit on the same land for the same purpose, the Commissioner shall approve the application of the one who, after investigation or hearing by the Commissioner, appears to have the best right to such lease or permit. If it appears that none of the applicants has any right or equities superior to those of another, the Commissioner may reject and deny all applications, or he may at a stated time and after due notice to all such applicants, receive sealed bids submitted in accordance with such requirements he may make, and shall approve the application of the bidder who, in all respects, is eligible to holding a lease or permit upon the land and will pay the highest annual rental therefor, or the Commissioner may reject all bids.

If such lands are offered for bid, the Commissioner shall issue a notice for call of sealed bids, stating in said notice the time and place said sealed bids will be accepted and the minimum rental there for that will be accepted by the Commissioner. A copy of the form of lease that will be issued to the successful bidder in bidding will be enclosed with said notice, together with the written form of bid to be submitted by the successful bidder.

Said bids shall be submitted on the form enclosed in the notice, filled out and signed by the bidder, placed in an envelope addressed to the State Land Commissioner with the number of the bid on the outside thereof, together with the first year's rental at the annual rental bid. Failure to provide the annual rental amount or receipt of a check for the amount drawn on insufficient funds, will give the Commissioner the right to withdraw the bid covered by these insufficient funds. Money received from an unsuccessful bidder will be returned following award of the lease or permit. The envelope with enclosures may be delivered in person or placed in an envelope and mailed to the State Land Commissioner. No bid will be received from anyone other than the applicants named in said notice and call for sealed bids.

At the time and place stated in said notice and call for bids, the bids will be opened and publicly read by the Commissioner, or his representative, and no bid will be considered for an annual rental less than the minimum rental stated in said notice and call for sealed bids.

- A.** If two or more applicants apply for a lease or permit on the same land for the same purpose, the Department shall send a Notice of Conflicting Applications to each applicant requiring each applicant to submit to the Department a statement of equities containing the basis of the applicant's claim to the lease or permit and to serve a copy upon the other applicants within 30 days from the date of the Department's Notice, unless the time is extended by the Department or by stipulation of the applicants. If an applicant fails to submit a statement of equities, the Department may examine evidence or records, or review testimony from a hearing conducted under subsection (E)(2) and make a decision regarding the conflicting applications. The Department shall make its decision regarding an application filed for lease or permit under this Section in the best interest of the Trust.
- B.** An applicant shall have the statement of equities verified under oath before an officer authorized under the laws of this state to administer oaths, or sign the statement of equities accompanied by a certification under penalty of perjury that the information contained in the statement of equities is to the best of the applicant's knowledge and belief, true, correct, and complete. The statement of equities shall include information related to the factors considered under subsection (D).
- C.** An applicant, within 10 days from the date of receipt of the statement of equities of another applicant, may file with the Department and if filed, shall serve upon other applicants, a response to the other applicant's statement of equities.
- D.** In conducting an investigation and review, the Department shall consider the following factors:
 - 1.** An offer to pay more than appraised rental as an equity, if the Department determines not to go to bid on the conflict;
 - 2.** Whether the applicant's proposed land use or land management plan is beneficial to the Trust;
 - 3.** The applicant's access to or control of facilities or resources necessary to accomplish the proposed use;
 - 4.** The applicant's willingness to reimburse the owner of reimbursable non-removable improvements;
 - 5.** The applicant's previous management of land leases, land management plans, or any history of land or resource management activities on private or leased lands;
 - 6.** The applicant's experience associated with the proposed use of land;

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7. Impact of the proposed use on future utility and income potential of the land;
 8. Impact to surrounding state land;
 9. Recommendations of the Department's staff; and
 10. Any other considerations in the best interest of the Trust.
- E.** After investigation and review of the statements of equities, the Department may:
1. Request additional information from an applicant;
 2. Conduct a hearing at the Department or another designated location at the earliest possible date, giving notice of time and place for hearing to all applicants;
 3. Award the lease or permit to an applicant;
 4. Reject all applications; or
 5. Proceed to bid according to A.R.S. § 37-284.
- F.** The bid process is as follows:
1. If the Department determines to proceed to bidding, the Department shall issue a Notice of Call for Bidding that states the time and place bids will be accepted including the minimum rental that will be accepted.
 2. The Notice shall specify the existence of a preferred right, if any. The Department shall include, with the Notice, a copy of the form of lease or permit that may be offered to the successful bidder. A bidder shall submit a written bid to the Department by 5:00 p.m. no later than 30 days from the date of the Notice. A bid shall be made on forms provided by the Department. The Department shall accept a bid form only with the original signature of the bidder. A bidder may either mail or deliver the bid in person to the Department.
 3. The Department shall not accept a bid from anyone other than an applicant named in the Notice of Call for Bidding.
 4. Unless subsection (F)(5) applies, the Department shall accept only one bid from each applicant. Once the bid is submitted, the Department shall not accept a second or substitute bid or any change to the original bid.
 5. If the bids of two or more applicants are the same, are also the highest bids offered, and there is no preferred right, the Department shall repeat the bid procedure under subsections (F)(1) and (2) with the following exceptions, until a single highest bid is submitted:
 - a. In a call for new bids, the Department shall establish a new minimum rental that equals the highest amount offered in the previous bidding.
 - b. The Department shall accept new bids only from the applicants who submitted the highest matching bids.
 6. The Department shall mail a Notice of Bid Results to all bidders. A bidder choosing to exercise a preferred right shall, within 15 days of the Department's issuance of the Notice of Bid Results, offer a bid matching the highest bid, in writing, on forms provided by the Department.
- G.** Nothing in this Section limits or diminishes the jurisdiction of the Department. This Section does not apply to an application for an oil or gas lease.

R12-5-516. Time for Filing Conflicting Applications Repealed

~~If no application for lease or permit, other than application for renewal by a prior lessee or permittee, has been filed on or before the date of the expiration of said lease or permit, no further application shall be accepted, unless the Commissioner should determine that the prior lessee or permittee does not have a preference right to renew his lease or permit or that the continued leasing of said land is not for the best interests of the state.~~

~~Where an application is filed on open land, the Commissioner shall have authority to fix the time when no further applications shall be accepted by the Commissioner. Notice of such time shall be made of record and posted in the Department.~~

R12-5-534. Rules of Procedure in Conflicts Repealed

~~Whenever it shall appear that two or more persons have applied for a lease or permit on the same lands, the Commissioner may notify all parties in interest of record of the conflict of such existing applications and may in such notice require of each of the applicants to furnish a statement of facts upon which the applicant bases his preferential right to such lease or permit. In such event, said notice shall require each applicant to file with the Commissioner and serve a copy upon the other applicants within 30 days from the date of such notice, unless such time is extended by the Commissioner or by stipulation of the parties, his statement of equities or claim of preferential right to lease or permit, clearly setting forth all of the grounds upon which he bases his claim to preference. Service of a copy of the statement of claim or preferential right on all parties in interest shall be made as in these rules provided, and evidence of such service shall be made within ten days from the date thereof.~~

~~In each instance the statement of claim must be verified under oath before some officer authorized under the laws of the state of Arizona to administer such oaths, or, in lieu thereof, the applicant may affix his signature to the statement of claim accompanied by a certification under penalty of perjury that the information contained in the statements is to the best of applicant's knowledge and belief true, correct and complete.~~

~~Each applicant within ten days from the date of the receipt of the statement of claim of the conflicting applicant may file with the Commissioner and serve upon opposite parties a responsive answer or pleading to the conflicting applicant's statement or claim of preferential right. Evidence of such service shall be filed as provided above.~~

Notices of Final Rulemaking

In case an oral hearing is demanded by any of the conflicting applicants, such demand must be made in writing and accompany the preferential statement of equities or claim of preferential right, and a copy of said demand must be served upon the opposing applicant in the same manner and at the same time as the claim for preferential right or statement of equities are served. Upon receipt of said statement of equities and demand for a hearing, the Commissioner shall set the matter down for hearing at his office, or such other place as he may designate, at the earliest practicable date, giving notice of said time and place for hearing to all parties in interest of record.

If no oral argument has been requested or ordered by the Commissioner, the Commissioner will determine whether anyone of the applicants has the right to the lease or permit upon such lands based upon the equities or preferential rights to lease or permit submitted by the various parties to the proceedings and upon the record before the Commissioner.

If the Commissioner should find from the evidence submitted to him that none of the applicants has a preference right to lease or permits, he will notify them of such fact and may deny all applications of record or offer said lease or permit to the highest bidder among the applicants on the basis of sealed bids submitted to the Commissioner in accordance with these rules and regulations.

Failure of any applicant to submit his statement of equities or claim of preferential right as above prescribed or to appear at the hearing set therefor will not preclude the Commissioner from examining the evidence and records or from hearing testimony submitted by the other conflicting applicants and making his decision thereon.

Nothing herein shall be construed to limit or diminish the jurisdiction of the Commissioner.

This rule shall not apply to oil and gas lease conflicts.

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION

PREAMBLE

- 1. Sections Affected**
R17-1-203
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 28-366
Implementing statutes: A.R.S. §§ 28-372, 28-2161, 28-2162, 28-3301, and 44-6852
- 3. The effective date of the rule:**
October 4, 2003
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 9 A.A.R. 735, February 28, 2003
Notice of Proposed Rulemaking: 9 A.A.R. 594, February 28, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Troy A. Walters, Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
Telephone: (602) 712-6722
Fax: (602) 241-1624
E-mail: twalters@dot.state.az.us
Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.
- 6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:**
The agency is amending this Section to clarify provisions for assessing a returned check service charge to include specific financial institution or agency reasons for dishonoring check payment. The Department will also impose a statutory penalty on a person's driver license, identification license, or vehicle registration if a check is returned and the situation is not resolved by the due date of the transaction. This rulemaking does not arise from a five-year rule review.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The agency did not review any study for this rulemaking.
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**
The economic impact of the service charge prescribed in this Section is unchanged from the Section's original making effective November 13, 2000. The inclusion of additional language concerning when the agency will assess a returned check service charge clarifies the rule. The license cancellation or registration non-renewal penalty has the potential to cost an affected person in lost time, inconvenience, decreased earnings, or possible civil sanctions resulting from law enforcement citations. The prescribed penalties are not new; they have long been codified in statute. The penalties are included specifically in this rulemaking to underscore that a writer of a returned check must resolve the payment by the due date of the transaction.

Notices of Final Rulemaking

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Reformatted subsection (C) for clarification that late registration penalties apply if a payment is not made timely, including a payment that is not honored by the bank for any of the reasons listed in the rule. Removed subsection (A)(2)(c) as it is redundant with the changes to subsection (C). Changed a reference typo, A.R.S. § 28-2161(A)(1), in subsection (C)(2)(c). The correct reference is A.R.S. § 28-2161(A)(2). Also, made minor technical and grammatical changes at the suggestion of G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The agency received no comments on this rulemaking.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rule follows:

TITLE 17. TRANSPORTATION

**CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION**

ARTICLE 2. FEES

Section

R17-1-203. Returned Check Service Charge; Penalty

ARTICLE 2. FEES

R17-1-203. Returned Check Service Charge; Penalty

A. Service charge assessment.

1. The Department shall assess a service charge for each check, draft, or order returned because of:
 - a. Insufficient monies, such as:
 - i. Check amount less than minimum.
 - ii. Check drawn against uncollected funds.
 - iii. Credit limit exceeded.
 - iv. Post-dated.
 - v. Stale-dated, or
 - vi. Uncollected funds;
 - b. Stop payment, ~~or,~~ such as refer to maker; or
 - c. Closed account, ~~such as~~ unable to locate account.
2. A service charge under this subsection includes:
 - a. A \$25 returned check, draft, or order service charge, and
 - b. Any applicable financial institution charge prescribed under A.R.S. § 44-6852, ~~and~~
 - e. ~~Any applicable late title and registration penalty prescribed under A.R.S. § 28-2162.~~

B. Remedial remittance.

1. The Department shall require ~~service charge payment that~~ payment of a service charge for a returned check, draft, or order ~~be made by:~~
 - a. Cash, or
 - b. Other certified means.
2. A remittance under this subsection ~~shall include~~ includes:
 - a. The original remittance amount, and
 - b. Any charge assessed under subsection (A)(2).

C. Penalty.

1. A person who does not make remittance under subsection (B) on or before the vehicle's registration expiration date is subject to a late title and registration penalty as prescribed under A.R.S. § 28-2162.

Notices of Final Rulemaking

2. A person who does not make remittance under subsection (B) within 45 days after the date of the Department's written notice of a returned check, draft, or order, is subject to the following actions on the person's license, permit, or registration that was insufficiently funded:
 - a. For a driver license or permit, as prescribed under A.R.S. § 28-3301(A);
 - b. For a nonoperating identification license, as prescribed under A.R.S. § 28-3301(F); or
 - c. For a vehicle registration, as prescribed under A.R.S. § 28-2161(A)(2).